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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,767	07/12/2001	Robert Noodelijk	CHRE:110	9584

7590 04/27/2006

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EXAMINER

HWU, JUNE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/902,767	Applicant(s) NOODELIJK, ROBERT	
	Examiner June Hwu	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The request for reconsideration filed March 1, 2006 is acknowledged and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office action.

Claim Rejections

Claim 1 remains rejected under 35 USC 102(b) as being anticipated by the Netherlands Plant Breeder's Right (PBR) application number CHR2752 published on May 16, 1996, more than one year prior to the effective filing date of this instant plant application in view of Applicant's admission that the instant cultivar was first sold on December 1998 (response dated December 10, 2002, page 3), and in light of the Plant Varieties Journal Quarter One 2004, Vol. 17, No. 1, page 303 which indicates the instant cultivar was first sold in the Netherlands on January 15, 1999, and in light of The New Royal Horticultural Society Dictionary of Gardening 1992 vol. 1 describing asexual reproduction of chrysanthemum plants (pages 614-618).

Claim 1 remains rejected under 35 U.S.C. 102(b) as being anticipated by the European Plant Breeder's Right (PBR) application number 19970499 published on June 15, 1997 and the denomination published on August 17, 1998, more than one year prior to the effective filing date of this instant plant application in view of Applicant's admission that the instant cultivar was first sold on December 1998 (response dated December 10, 2002, page 3), and in light of the Plant Varieties Journal Quarter One 2004, Vol. 17, No. 1, page 303 which indicates the instant cultivar was first sold in the Netherlands on January 15, 1999, and in light of The New Royal Horticultural Society Dictionary of Gardening 1992 vol. 1 that describe the asexual reproduction of chrysanthemum (pages 614-618).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by the Polish Plant Breeder's Right (PBR) application number OO00536 published on March 31, 1999, more than one year prior to the effective filing date of this instant plant application in view of Applicant's admission that the instant cultivar was first sold on December 1998 (response dated December 10, 2002, page 3), and in light of the Plant Varieties Journal Quarter One 2004, Vol. 17, No. 1, page 303 which indicates the instant cultivar was first sold in the Netherlands on January 15, 1999, and in light of The New Royal Horticultural Society Dictionary of Gardening 1992 vol. 1 that describe the asexual reproduction of chrysanthemum (pages 614-618).

Response to Arguments

Applicant's arguments filed March 1, 2006 have been fully considered but they are not persuasive.

Applicant argues that the information regarding the instant cultivar that is identified by the breeders' reference name is not available to third parties or assignee, and that information is not available to the public.

This argument has not been found persuasive because regardless of whether this may or may not have occurred, the plant was in the public's possession more than one year prior to the U.S. filing date. The foreign sale was not an obscure, solitary occurrence that would go unnoticed by those skilled in the art. Since, the instant plant was in the public domain and one of ordinary skill in the art could have obtained the plant and asexually reproduce it by means well known in the art as for example the information found in The New Royal Horticultural Society Dictionary of Gardening describing ways of asexually reproducing chrysanthemum plants, then the publication describing the plant would enabled the disclosure. The publication served as notice to the public that the plant existed. Moreover, the Court in *In re Elsner*, 72

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USPQ2d 1038 (CA FC 2004) states that a printed publication coupled with a foreign sale of that plant would constitute a bar under §102(b) (p. 1040).

For the reasons outlined above and in the previous Office action, the rejection is deemed proper and is maintained.

Conclusion

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached on (571) 272-0975. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

**KENT BELL
PRIMARY EXAMINER**

Kent Bell